Sports Gambling in School: A Legal Analysis of Proposals to Strengthen Federal Prohibitions

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SUMMARY

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Sports Gambling in School: A Legal Analysis of Proposals to Strengthen Federal Prohibitions

Several proposals have been introduced in the 107th Congress to combat incidents of youthful gambling on sporting events. S. 718 (McCain et al.) and H.R. 1110 (Graham et al.) seek to accomplish this by implementing a National Gambling Impact Study Commission recommendation that gambling on college and high school sporting events be completely banned.

Existing Federal law outlaws gambling on all professional and amateur sporting events, but exempts sports gambling in those states where it had been legalized prior to the federal prohibition. S. 718 and H.R. 1110 effectively repeal the exemption with respect to amateur sports gambling. Nevada is now the only state where such gambling is lawful.

In addition to implementing the Commission's recommendation, proponents claim the bills protect the integrity of amateur sports and help reduce gambling among the young, particularly on college campuses. Critics contend that it will needlessly impose an economic hardship on the State of Nevada and is incompatible with the principles of federalism.

S. 338 (Ensign et al.)/ H.R. 641 (Gibbons et al)) takes a different tack. It seeks to reduce illegal sports gambling among the young through a series of research, prosecutorial and administrative initiatives to eliminate gambling on college campuses and reduce illegal sports gambling. It creates a sports gambling task force, increases the maximum federal criminal penalties for sports gambling, calls for studies on sports gambling by juveniles and enforcement of existing gambling laws, and urges educational and governmental entities to develop and execute youth gambling education and prevention programs.

The principal criticism of this Ensign/Gibbons proposal to date is that while its components might constitute a welcome supplement it is no substitute for the McCain-Graham proposal.

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Introduction

The National Gambling Impact Study Commission reported wide-spread sports gambling on college campuses and, although closely divided, recommended that gambling on collegiate and amateur athletic events be completely outlawed. As in the 106th Congress, the sports gambling measures introduced thus far in this Congress fall into two categories: those that impose a complete ban on amateur sports gambling (S. 718 (McCain et al.), H.R. 1110 (Graham et al.)), and those that seek to reduce campus gambling and illegal sports gambling (S. 338 (Ensign et al.), H.R. 641 (Gibbons et al)).

Background

There are more than a few federal gambling laws. Most, but not all, are designed to reenforce state gambling laws. Several refer to sports gambling and others have sufficient breadth to encompass it. For example, the Wire Act, 18 U.S.C.1804, which proscribes the interstate transmission of bets or gambling information, speaks of gambling on "sporting events and contests" specifically. The Travel Act, 18 U.S.C. 1952, which criminalizes interstate travel to conduct the affairs of various unlawful activities, and the federal prohibition on illegal gambling business, 18 U.S.C. 1955, on the other hand, do not mention sports gambling as such but reach illegal gambling generally.

Not all federal gambling laws impose criminal penalties. The Professional and Amateur Sports Protection Act (PASPA), 28 U.S.C. 3701-3704, for instance, merely entitles the Attorney General and various sports organizations to a federal court order enjoining governmental entities and their contractors from sponsoring, licensing, or engaging in sports gambling. And although the lottery broadcast ban, 18 U.S.C. 1305, carries criminal penalties, it is enforced primarily through the regulatory authority of the Federal Communications Commission.

Since federal gambling laws have often been crafted to mirror state gambling policies, when gambling policies in the states became more ambivalent so too did federal law.[1]

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[1] In fact, the Supreme Court recently observed that "in the judgement of both the Congress and many state legislatures, the social costs that support the suppression of gambling are offset, and sometimes outweighed, by countervailing policy considerations, primarily in the

Early recognition of this fact led to the creation of the National Gambling Impact Study Commission, Pub.L. 104-169, 110 Stat. 1482 (1996). In its final report, the Commission recommended that the state and federal governments act under the presumption that "state governments are best equipped to regulate gambling within their borders with two exceptions – tribal and Internet gambling," but urged that "the betting on collegiate and amateur athletic events that is currently legal be banned altogether," THE NATIONAL GAMBLING IMPACT STUDY COMMISSION: FINAL REPORT, *Recommendations* 3.1, 3.7 (1999).

When reporting out sports gambling legislation in the last Congress, each Committee characterized the Commission's sports gambling recommendation as a third exception to the state primacy recommendation.[2]

Both the House Judiciary Committee and the Senate Committee on Commerce, Science and Transportation reported sports gambling proposals favorably, but the 106th Congress adjourned before any further action could be taken. The proposals have been reintroduced in this Congress, however, by Senator McCain (S. 718) and Congressman Graham (H.R. 1110).[3] The Senate Commerce, Science and

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form of economic benefits. Despite its awareness of the potential social costs, Congress has not only sanctioned casino gambling for Indian tribes through tribal-state compacts, but has enacted other statutes that reflect approval of state legislation that authorizes a host of public and private gambling activities. That Congress has generally exempted state-run lotteries and casinos from federal gambling legislation reflects a decision to defer to, and even promote, differing gambling policies in different States. Indeed, in *Edge* we identified the federal interest furthered by §1304's partial broadcast ban as the congressional policy of balancing the interests of lottery and nonlottery States. Whatever, its character in 1934 when §1304 was adopted, the federal policy of discouraging gambling in general, and casino gambling in particular, is now decidedly equivocal," *Greater New Orleans Broadcasting Ass'n, Inc. v. United States*, 527 U.S. 173, 186-87 (1999).

[2] "While the NGISC's Final Report was unanimously adopted by all commissioners, recommendation 3.7 was approved by a divided majority – five commissioners were in favor, three commissioners opposed, and one commissioner abstained. There appears to be a tension between recommendations 3.1 and 3.7 in that the former leaves the regulation of gambling to state and local governments, while the latter recommends that federal law ban amateur sports gambling. Kay C. James, Chairman of the National Gambling Impact Commission, has submitted a letter clarifying the intent of the Commission to recommend that all gambling on collegiate and amateur sports be banned by Federal legislation," H.Rept. 106-903, at 4 (2000); *see also*, S.Rept. 106-278, at 5 (2000)(quoting a letter from the Commission chair)("Opponents of S. 2340 have misconstrued these statements so as to conclude that the Commission recommended vesting authority with the states to ban betting on college and high school children. The more reasoned interpretation of the Commission's final report is quite the opposite. While the Commission has recognized traditional authority of the states, the federal government, through PASPA [28 U.S.C. 3701-3704], maintains jurisdiction over sports wagering. 'Throughout the Report, the Commission did not attempt to dispute or change any of the existing jurisdictional arrangements between the federal, state and tribal governments. The intent of the Commission's recommendation was to close the loophole in the 1992 Act, a recommendation requiring federal action'").

[3] S. 718 is cosponsored by Senators Brownback and Jeffords; H.R. 1110 by Representatives Roemer, Osborne, Kind, King, Duncan, Baldacci, Smith (of Texas), Green (of Wisconsin), Allen, Goode, Etheridge, Shays, Blumenauer, Walsh, Carson (of Indiana),

Technology Committee approved the McCain bill with amendments on May 14, 2001, S.Rept. 107-16 (2001).[4]

Killing Off Grandfathers/Monopolies

S. 718, the Amateur Sports Integrity Act, as introduced consists of three titles. The first which deals with athletic performance enhancing drugs is beyond the scope of our discussion. The third which proscribes the acceptance of credit cards, checks and the like by illegal Internet gambling operations is largely addressed elsewhere.[5] The second essentially replicates the proscriptions of the Professional and Amateur Sports Protection Act, 28 U.S.C. 3701-3704, with respect to Olympic, high school and college gambling but without the exceptions grandfathered into existing law. As a practical matter its impact is to outlaw sports gambling with respect to high school, college or Olympic contests in every state, but its impact would be felt primarily in the only state where such gambling is now legal, Nevada, S.Rept. 107-16, at 5.[6]

The Professional and Amateur Sports Protection Act forbids any governmental entity or any of its contractors from sponsoring, operating, licensing or authorizing sports gambling.[7] The Attorney General or aggrieved sports organizations enforce the Act through court orders which enjoin further violations.[8] The Act's prohibitions are inapplicable to sports gambling in states where it was lawful at the time the

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Weldon (of Florida), Wolf, Frank and Norton.

[4] References to S. 718 refer to the amended version approved by the Senate committee.

[5] *Internet Gambling: A Sketch of Legislative Proposals in the 107th Congress*, RS .

[6] The relevant text of S. 718 is appended

[7] 28 U.S.C. 3702 ("It shall be unlawful for--(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or (2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity, a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games")

[8] 28 U.S.C. 3703 ("A civil action to enjoin a violation of section 3702 may be commenced in an appropriate district court of the United States by the Attorney General of the United States, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation").

legislation was proposed.[9] The exceptions were grounded in a reluctance to apply the proscription retroactively in states where sports gambling had been legalized.[10]

The current proposals question that reservation. The Senate bill adds its provisions to the chapter of the United States Code that incorporates the United States Olympic Committee, 36 U.S.C. ch. 2205. The House bill, H.R. 1110 as introduced, in contrast simply amends section 3704. Its effect, however, is the same as the Senate proposal.

Proponents of the two proposals argue that they implement the recommendations of the gambling commission by closing a loophole in existing law,

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[9] 28 U.S.C. 3704 ("(a) Section 3702 shall not apply to--(1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the scheme was conducted by that State or other governmental entity at any time during the period beginning January 1, 1976, and ending August 31, 1990;

"(2) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both--(A) such scheme was authorized by a statute as in effect on October 2, 1991; and (B) a scheme described in section 3702 (other than one based on parimutuel animal racing or jai-alai games) actually was conducted in that State or other governmental entity at any time during the period beginning September 1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity;

"(3) a betting, gambling, or wagering scheme, other than a lottery described in paragraph (1), conducted exclusively in casinos located in a municipality, but only to the extent that--(A) such scheme or a similar scheme was authorized, not later than one year after the effective date of this chapter, to be operated in that municipality; and (B) any commercial casino gaming scheme was in operation in such municipality throughout the 10-year period ending on such effective date pursuant to a comprehensive system of State regulation authorized by that State's constitution and applicable solely to such municipality; or

"(4) parimutuel animal racing or jai-alai games.

"(b) Except as provided in subsection (a), section 3702 shall apply on lands described in section 4(4) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(4))").

[10] S.Rept. 102-248, at 8 (1992)("Although the committee firmly believes that all such sports gambling is harmful, it has no wish to apply this new prohibition retroactively to Oregon or Delaware, which instituted sports lotteries prior to the introduction of our legislation. Neither has the committee any desire to threaten the economy of Nevada, which over many decades has come to depend on legalized private gambling, including sports gambling, as an essential industry, or to prohibit lawful sports gambling schemes in other states that were in operation when the legislation was introduced. Therefore, it provides an exemption for those sports gambling operations which already are permitted under state law. Furthermore, it specifically excludes dog and horse racing and jai-alai from the bill's prohibitions").

The House report in the last Congress noted that, "the grandfathered states were Delaware, Montana, Oregon and Nevada; however, Oregon and Nevada are the only states that offer sports gambling. Sports gambling in Oregon is limited to a game called 'Sports Action' that allows wagering on the outcome of professional football games. . . ." H.Rept. 106-903, at 10 n.6.

mitigate the threat that gambling poses to the integrity of amateur athletics, and reduce the extent of illegal sports gambling.[11]

Opponents respond that the proposals have a substantial and unfair economic impact on the State of Nevada and one of its principal employers, whose regulated gambling activities do not imperil the integrity, such as it is, of amateur athletics, and that there are effective ways to reduce the extent of illegal sports gambling, an objective the proposals do not achieve.[12] They also argue that the proposals are constitutionally suspect as an impermissible intrusion on state prerogatives[13] and a governmental taking without just compensation.[14]

Critics' constitutional contentions appear to have something of an uphill climb. As *Lopez* explained and *Morrison* confirms, Congress' commerce clause powers extend to activities that have a substantial affect on interstate commerce, and to economic enterprises which even if intrastate have an impact on commerce. Sports gambling, particularly when conducted within a casino in Nevada, appears to fit comfortably among the examples of economic activity which the Supreme Court finds within Congress' power under the commerce clause.[15]

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[11] S.Rept. 107-16, at 2-5 (2001); 147 *Cong.Rec.* S3543-544 (daily ed. April 5, 2001)(remarks of Sens. McCain and Brownback); *Student Athlete Protection Act: Hearings Before the Comm. on the Judiciary*, 106th Cong., 2d Sess. (2000)(statement of Rep. Graham), *available at*, www.house.gov/judiciary (on April 28, 2001).

[12] *Student Athlete Protection Act: Hearings Before the Comm. on the Judiciary*, 106th Cong., 2d Sess. (2000)(statements of Reps. Gibbons and Berkley, Frank J. Fahrenkopf, Jr.(Pres. & CEO of the American Gaming Ass'n) and Brian Sandoval (Chairman of the Nevada Gaming Comm'n), available at, www.house.gov/judiciary (on April 28, 2001); *see also*, S.Rept. 106-278, at 15-8 (2000)(minority views of Sen. Bryant).

[13] H.Rept. 106-903, at 12-13 (dissenting views of Reps. Conyers, Berman, Scott, Watt, Jackson-Lee, Delahunt and Weiner)("We are further concerned that H.R. 3575 [the predecessor to H.R. 1110] may run afoul of the constitutional requirement under the commerce clause, which limits congressional authority to the regulation of interstate commerce and under the 10th amendment, which reserves all of the unenumerated powers to the states. This is a particular concern in light of the recent Supreme Court decisions such as *United States v. Morrison . . . .Lopez v. United States . . . New York v. United States* and *Printz v. United States. . .*"); S.Rept. 107-16, at 18 (2001)(minority views of Sens. Ensign, Breaux, and Boxer).

[14] Id. ("The Fifth Amendment's Takings Clause prohibits the government from taking private property for the public use without just compensation. The U.S. Supreme Court in Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1003 (1984) held that the Takings Clause protects both tangible and intangible property rights, such as gambling infrastructure and gambling licenses, respectively. Indeed, Congress has previously recognized that federal gambling legislation can have the effect of injuring private property interests (Senate Report 102-248, 1991). S. 718's prohibition on state regulated college sports wagering without compensation violates the Takings Clause").

[15] "First, we have upheld a wide variety of congressional Acts regulating intrastate economic activity where we have concluded that the activity substantially affected interstate commerce. Examples include the regulation of intrastate coal mining, intrastate extortionate credit transactions [*i.e.*, loansharking], restaurants utilizing substantial interstate supplies, inns and hotels catering to interstate guests, and production and consumption of homegrown

Although a matter lies within Congress' authority under the commerce clause, efforts to exercise that authority may fail if inconsistent with the principles of federalism reflected in the Tenth Amendment. Thus, Congress in the name of commerce may not compel a state to enact a federal regulatory scheme nor compel the state or its officers to enforce such a scheme.[16] Congress may regulate state activities within its powers under the commerce clause, however, as long as it does not compel the states to exercise regulatory authority over others. For instance, the Drivers' Privacy Protection Act, 18 U.S.C. 2721-2725, bans the state departments of motor vehicles from releasing certain motor vehicle registration information (information which some have traditionally sold) except for federally approved purposes. The Act survived federalism challenge based on *New York* and *Printz* because it was deemed to constitute the regulation of state activity not the control of state regulation of the activities of others.[17]

The prohibitions against state sponsorship or operation of sports gambling activities are clearly an example, like *Condon* and *Baker*, of federal regulation of state activity. Whether the licensing prohibition merely constitutes a ban on state activity or crosses the line as a federal command that the state regulate its citizenry per federal instruction is much closer question.

Of course, the Eleventh Amendment comes to mind whenever a statute, enacted under a claim of commerce clause powers, purports to vest federal court jurisdiction for a private suit against a state or its officials.[18] The Eleventh Amendment proscription, however, is subject to a limitation which permits some injunctive relief

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wheat," *United States v. Lopez*, 514 U.S. 549, 559-60 (1995), cited in with approval in *United States v. Morrison*, 529 U.S. 598, 610 (2000).

[16] "We held in *New York [v. United States*, 505 U.S. 144 (1992)] that Congress cannot compel the states to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the states' officers directly," *Prinz v. United States*, 521 U.S. 899, 935 (1997). In *New York* Congress sought to require the states to regulate the disposal of radioactive waste found within their borders by insisting that they either assume ownership of the waste or to accept liability for damages caused by the waste; the statute in *Prinz* instructed state officials to conduct background checks on potential handgun buyers.

[17] *Reno v. Condon*, 528 U.S. 141, 150-51 (2000)(internal quotations and citations generally omitted)("We agree with South Carolina's assertion that the DPPA's provisions will require time and effort on the part of state employees, but reject the state's argument that the DPPA violates the principles laid down in either *New York* or *Printz*. We think, instead, that this cases is governed by our decision in *South Carolina v. Baker*, 485 U.S. 505 (1988). In *Baker*, we upheld a statute that prohibited States from issuing unregistered bonds because the law regulated state activities rather than seeking to control or influence the manner in which states regulate private parties").

[18] "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State," U.S.Const. Amend. XI.

against state officials for violations of federal law, *Ex parte Young*, 209 U.S. 123 (1908).[19] This seems to be precisely what the proposals contemplate.

Critics face no less formidable obstacles in any effort to establish a takings clause claim. As a threshold matter, "a party challenging governmental action as an unconstitutional taking bears a substantial burden," for "not every destruction or injury to property by governmental action has been held to be a taking in the constitutional sense," *Eastern Enterprises v. Apfel*, 524 U.S. 498, 523 (1998). In the absence of a physically intrusive taking, "where a regulation places limitations on [property] that fall short of eliminating all economically beneficial use, a taking nonetheless may have occurred, depending on a complex of factors including the regulation's economic effect on the [property] owner, the extent to which the regulation interferes with reasonable investment-backed expectations, and the character of the government action," *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001). When the challenged governmental action occurs within a field of highly regulated activity, like gambling, the task of establishing a taking may be even more daunting, *Eastern Enterprises*, 524 U.S. at 528.[20]

Proponents might well point out that the proposals introduce no new constitutional questions; they merely follow the legislative path established by the Professional and Amateur Sports Protection Act. They might argue that passage of Act suggests that Congress saw no constitutional impediment to enactment of the original statute. Moreover, they may contend that the provision in S. 718 for prompt judicial review of the proposal's constitutionality precludes objection on constitutional grounds.

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[19] "[T]he difference between the type of relief barred by the Eleventh Amendment and that permitted under *Ex parte Young* will not in many instances be that between day and night . . . . An allegation of an ongoing violation federal law where the requested relief in prospective [*e.g.*, injunctive] is ordinarily sufficient to invoke the *Young*," *Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261, 281 (1997); *see also*, *Board of Trustees v. Garrett*, 121 U.S. 955, 968 n.9 (2001)("Our holding here that Congress did not validly abrogate the states' sovereign immunity from suit by private individuals for money damages under Title I does not mean that persons with disabilities have no federal recourse against discrimination. Title I of the ADA still prescribes standards applicable to the states. Those standards can be enforced by the United States in actions for money damages, as well as by private individuals in actions for injunctive relief under *Ex parte Young* . . .").

[20] To say nothing of the fact that Nevada sport gambling entrepreneurs may have to overcome contentions (1) that their reasonable expectations were always clouded by the general possibility that either the State of Nevada or the Congress would eliminate their governmentally created monopoly; (2) that they should have expected that Congress might conclude that the Nevada exception undermined the effectiveness of the otherwise nation-wide amateur sports gambling ban; and (3) that its federally created monopoly status accounts for much the value to be lost if the Nevada exemption were extinguished.

Even assuming a compensation-entitling taking, the appropriate remedy may be recourse to the Tucker Act for compensation rather than holding the statute unconstitutional.

Study, Prosecution, and Administrative Enforcement

The National Collegiate and Amateur Athletic Protection Act of 2001 (S. 338/H.R. 641) takes a different approach. It proposes a series of research, prosecutorial and administrative initiatives to eliminate gambling on college campuses and reduce illegal sports gambling. It instructs the Attorney General to establish a coordinating sports gambling task force and authorizes appropriations of $28 million for the task force.

It increases the criminal penalties for sports related gambling so that the penalty for point shaving becomes imprisonment for not more than 10 years instead of not more than 5 years.[21] The maximum penalties for transporting gambling paraphernalia (18 U.S.C. 1953(a)(appended)), for conducting an illegal gambling business (18 U.S.C. 1955(a)(appended)), and for violations of the Travel Act (18 U.S.C. 1952 (appended)) also rise from 5 to 10 years when gambling on "any sporting event or contest" is involved. And the maximum term of imprisonment for Wire Act offenses grows from 2 to 5 years.[22]

The proposal calls for Justice Department directed research on the extent of illegal sports gambling by juveniles as well as a multifaceted study on sports gambling with particular emphasis on the college level illegal gambling.[23]

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[21] 18 U.S.C. 224 now reads: "(a) Whoever carries into effect, attempts to carry into effect, or conspires with any other person to carry into effect any scheme in commerce to influence, in any way, by bribery any sporting contest, with knowledge that the purpose of such scheme is to influence by bribery that contest, shall be fined under this title, or imprisoned not more than 5 years, or both.

"(b) This section shall not be construed as indicating an intent on the part of Congress to occupy the field in which this section operates to the exclusion of a law of any State, territory, Commonwealth, or possession of the United States, and no law of any State, territory, Commonwealth, or possession of the United States, which would be valid in the absence of the section shall be declared invalid, and no local authorities shall be deprived of any jurisdiction over any offense over which they would have jurisdiction in the absence of this section.

"(c) As used in this section--(1) The term 'scheme in commerce' means any scheme effectuated in whole or in part through the use in interstate or foreign commerce of any facility for transportation or communication; (2) The term 'sporting contest' means any contest in any sport, between individual contestants or teams of contestants (without regard to the amateur or professional status of the contestants therein), the occurrence of which is publicly announced before its occurrence; (3) The term `person' means any individual and any partnership, corporation, association, or other entity".

[22] The bill enhances the penalties for all Wire Act offenses presumably in recognition of the dispute over whether the Wire Act reaches any gambling matters that do not involve sporting events or contests. The language of the Act (appended) supports either construction and Wire Act prosecutions related to gambling other than on sporting events are rare but not unheard of, *see e.g. United States v. Smith*, 390 F.2d 420 (4th Cir. 1968) (prosecution involving "numbers," *i.e.,* illegal lotteries).

[23] The college study to be conducted by a panel of federal, state and local law enforcement officials is to examine: "(1) the scope and prevalence of illegal college sports gambling, including unlawful sports gambling. . . (2) the role of organized crime in illegal gambling

It requires colleges receiving federal education funds to implement an illegal gambling reduction program which includes withholding athletically related student aid from those guilty of engaging in illegal gambling.[24]

The proposal ends with a congressional plea to educational and governmental entities as well as to the NCAA (National Collegiate Athletic Association) to develop and execute youth gambling education and prevention programs.

The principal criticism of this Ensign/Gibbons proposal to date is that while its components might constitute a welcome supplement it is no substitute for the McCain-Graham proposal.[25] Unstated thus far, except perhaps in the gaming commission's general recommendation, may be the view that both proposals interject the federal government into a matter appropriately left to the states.

Appendices

S. 718, Section 201
Prohibition of Gambling on Competitive Games
Involving High School and College Athletes
and the Olympics

(a) IN GENERAL-The Ted Stevens Olympic and Amateur Sports Act (chapter 2205 of title 36, United States Code) is amended by adding at the end the following new subchapter:

"**SUBCHAPTER III–MISCELLANEOUS**

"**220541. Unlawful sports gambling: Olympics; high school and college athletes**

"(a) PROHIBITION-It shall be unlawful for–
"(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or
"(2) a person to sponsor, operate, advertise, or promote, pursuant to law or compact of a governmental entity,

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on college sports; (3) the role of state regulators and the legal sports books in Nevada in assisting law enforcement to uncover illegal sports gambling and related illegal activities; (4) the enforcement and implementation of the Professional and Amateur Sports Protection Act of 1992, including whether it has been adequately enforced; (5) the effectiveness of steps taken by institutions of higher education to date, whether individually or through national organizations, to reduce the problem of illegal gambling on college sports; (6) the factors that influence the attitudes or levels of awareness of administrators, professors, and students, including student athletes, about illegal gambling on college sports; (7) the effectiveness of new countermeasures to reduce illegal gambling on college sports, including related requirements for institutions of higher eduction and persons receiving federal education funds; (8) potential actions that could be taken by the National Collegiate Athletic Association to address illegal gambling on college and university campuses; and (9) other matter relevant to the issue of illegal gambling on college sports as determined by the Attorney General."

[24] S. 718 has a similar, if somewhat less demanding, feature. It requires colleges to report on their policies concerning (and the prevalence of) underage and illegal gambling on campus.

[25] *See e.g.*, 147 *Cong.Rec.* S3544 (daily ed. April 5, 2001)(remarks of Sen. Brownback).

a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly, on a competitive game or performance described in subsection (b).

"(b) COVERED GAMES AND PERFORMANCES- A competitive game or performance described in this subsection is the following:

"(1) One or more competitive games at the Summer or Winter Olympics.

"(2) One or more competitive games in which high school or college athletes participate.

"(3) One or more performances of high school or college athletes in a competitive game.

"(c) APPLICABILITY-

(1) IN GENERAL- The prohibition in subsection (a) applies to activity described in that subsection without regard to whether the activity would otherwise be permitted under subsection (a) or (b) of 3704 of title 28.

(2) EXCEPTION- The prohibition in subsection (a) shall not apply to activity otherwise described in that subsection if all of the monies paid by the participants, as an entry fee or otherwise, are paid out to winning participants.

"(d) INJUNCTIONS- A civil action to enjoin a violation of subsection(a) may be commenced in an appropriate district court of the United States by the Attorney General of the United States, a local educational agency, college, or sports organization, including an amateur sports organization or the corporation, whose competitive game is alleged to be the basis of such violation.

* * *

"(f) DEFINITIONS- In this section:

"(1) HIGH SCHOOL- The term 'high school' has the meaning given the term 'secondary school'; in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

"(2) COLLEGE- The term 'college' has the meaning given the term 'institution of higher education' in section 101 of the Higher Education Act of 1965 (20 U.S.C. 8801).

"(3) LOCAL EDUCATIONAL AGENCY- The term 'local educational agency has the meaning given the term in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801)."

18 U.S.C. 224. Bribery in sporting contests

(a) Whoever carries into effect, attempts to carry into effect, or conspires with any other person to carry into effect any scheme in commerce to influence, in any way, by bribery any sporting contest, with knowledge that the purpose of such scheme is to influence by bribery that contest, shall be fined under this title, or imprisoned not more than 5 years, or both.

(b) This section shall not be construed as indicating an intent on the part of Congress to occupy the field in which this section operates to the exclusion of a law of any State, territory, Commonwealth, or possession of the United States, and no law of any State, territory, Commonwealth, or possession of the United States, which would be valid in the absence of the section shall be declared invalid, and no local authorities shall be deprived of any jurisdiction over any offense over which they would have jurisdiction in the absence of this section.

(c) As used in this section--

(1) The term "scheme in commerce" means any scheme effectuated in whole or in part through the use in interstate or foreign commerce of any facility for transportation or communication;

(2) The term "sporting contest" means any contest in any sport, between individual contestants or teams of contestants (without regard to the amateur or professional status of the contestants therein), the occurrence of which is publicly announced before its occurrence;

(3) The term "person" means any individual and any partnership, corporation, association, or other entity.

18 U.S.C. 1084. Transmission of wagering information; penalties

(a) Whoever being engaged in the business of betting or wagering knowingly uses a wire communication facility for the transmission in interstate or foreign commerce of bets or wagers or information assisting in the placing of bets or wagers on any sporting event or contest, or for the transmission of a wire communication which entitles the recipient to receive money or credit as a result of bets or wagers, or for information assisting in the placing of bets or wagers, shall be fined under this title or imprisoned not more than two years, or both.

(b) Nothing in this section shall be construed to prevent the transmission in interstate or foreign commerce of information for use in news reporting of sporting events or contests, or for the transmission of information assisting in the placing of bets or wagers on a sporting event or contest from a State or foreign country where betting on that sporting event or contest is legal into a State or foreign country in which such betting is legal.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State.

(d) When any common carrier, subject to the jurisdiction of the Federal Communications Commission, is notified in writing by a Federal, State, or local law enforcement agency, acting within its jurisdiction, that any facility furnished by it is being used or will be used for the purpose of transmitting

or receiving gambling information in interstate or foreign commerce in violation of Federal, State or local law, it shall discontinue or refuse, the leasing, furnishing, or maintaining of such facility, after reasonable notice to the subscriber, but no damages, penalty or forfeiture, civil or criminal, shall be found against any common carrier for any act done in compliance with any notice received from a law enforcement agency. Nothing in this section shall be deemed to prejudice the right of any person affected thereby to secure an appropriate determination, as otherwise provided by law, in a Federal court or in a State or local tribunal or agency, that such facility should not be discontinued or removed, or should be restored.

(e) As used in this section, the term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a commonwealth, territory or possession of the United States.

18 U.S.C. 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises

(a) Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to--

(1) distribute the proceeds of any unlawful activity; or

(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity,

and thereafter performs or attempts to perform--

(A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; or

(B) an act described in paragraph (2) shall be fined under this title, imprisoned for not more than 20 years, or both, and if death results shall be imprisoned for any term of years or for life.

(b) As used in this section (i) "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title and (ii) the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(c) Investigations of violations under this section involving liquor shall be conducted under the supervision of the Secretary of the Treasury.

18 U.S.C. 1953. Interstate transportation of wagering paraphernalia

(a) Whoever, except a common carrier in the usual course of its business, knowingly carries or sends in interstate or foreign commerce any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, or adapted, devised, or designed for use in (a) bookmaking; or (b) wagering pools with respect to a sporting event; or (c) in a numbers, policy, bolita, or similar game shall be fined under this title or imprisoned for not more than five years or both.

(b) This section shall not apply to (1) parimutuel betting equipment, parimutuel tickets where legally acquired, or parimutuel materials used or designed for use at racetracks or other sporting events in connection with which betting is legal under applicable State law, or (2) the transportation of betting materials to be used in the placing of bets or wagers on a sporting event into a State in which such betting is legal under the statutes of that State, or (3) the carriage or transportation in interstate or foreign commerce of any newspaper or similar publication, or (4) equipment, tickets, or materials used or designed for use within a State in a lottery conducted by that State acting under authority of State law, or (5) the transportation in foreign commerce to a destination in a foreign country of equipment, tickets, or materials designed to be used within that foreign country in a lottery which is authorized by the laws of that foreign country.

(c) Nothing contained in this section shall create immunity from criminal prosecution under any laws of any State, Commonwealth of Puerto Rico, territory, possession, or the District of Columbia.

(d) For the purposes of this section (1) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States; and (2) "foreign country" means any empire, country, dominion, colony, or protectorate, or any subdivision thereof (other than the United States, its territories or possessions).

(e) For the purposes of this section "lottery" means the pooling of proceeds derived from the sale of tickets or chances and allotting those proceeds or parts thereof by chance to one or more chance takers or ticket purchasers. "Lottery" does not include the placing or accepting of bets or wagers on sporting events or contests.

18 U.S.C. 1955. Prohibition of illegal gambling businesses

(a) Whoever conducts, finances, manages, supervises, directs, or owns all or part of an illegal gambling business shall be fined under this title or imprisoned not more than five years, or both.

(b) As used in this section--

(1) "illegal gambling business" means a gambling business which--

(i) is a violation of the law of a State or political subdivision in which it is conducted;

(ii) involves five or more persons who conduct, finance, manage, supervise, direct, or own all or part of such business; and

(iii) has been or remains in substantially continuous operation for a period in excess of thirty days or has a gross revenue of $2,000 in any single day.

(2) "gambling" includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels or dice tables, and conducting lotteries, policy, bolita or numbers games, or selling chances therein.

(3) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(c) If five or more persons conduct, finance, manage, supervise, direct, or own all or part of a gambling business and such business operates for two or more successive days, then, for the purpose of obtaining warrants for arrests, interceptions, and other searches and seizures, probable cause that the business receives gross revenue in excess of $2,000 in any single day shall be deemed to have been established.

(d) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the United States. All provisions of law relating to the seizure, summary, and judicial forfeiture procedures, and condemnation of vessels, vehicles, merchandise, and baggage for violation of the customs laws; the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such sale; the remission or mitigation of such forfeitures; and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred or alleged to have been incurred under the provisions of this section, insofar as applicable and not inconsistent with such provisions. Such duties as are imposed upon the collector of customs or any other person in respect to the seizure and forfeiture of vessels, vehicles, merchandise, and baggage under the customs laws shall be performed with respect to seizures and forfeitures of property used or intended for use in violation of this section by such officers, agents, or other persons as may be designated for that purpose by the Attorney General.

(e) This section shall not apply to any bingo game, lottery, or similar game of chance conducted by an organization exempt from tax under paragraph (3) of subsection (c) of section 501 of the Internal Revenue Code of 1954, as amended, if no part of the gross receipts derived from such activity inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by him in the conduct of such activity.

Professional and Amateur Sports Protection Act

28 U.S.C. 3701. Definitions

For purposes of this chapter--

(1) the term "amateur sports organization" means--

(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more amateur athletes participate, or

(B) a league or association of persons or governmental entities described in subparagraph (A),

(2) the term "governmental entity" means a State, a political subdivision of a State, or an entity or organization, including an entity or organization described in section 4(5) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(5)), that has governmental authority within the territorial boundaries of the United States, including on lands described in section 4(4) of such Act (25 U.S.C. 2703(4)),

(3) the term "professional sports organization" means--

(A) a person or governmental entity that sponsors, organizes, schedules, or conducts a competitive game in which one or more professional athletes participate, or

(B) a league or association of persons or governmental entities described in subparagraph (A),

(4) the term "person" has the meaning given such term in section 1 of title 1, and

(5) the term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Palau, or any territory or possession of the United States.

§ 3702. Unlawful sports gambling

It shall be unlawful for--

(1) a governmental entity to sponsor, operate, advertise, promote, license, or authorize by law or compact, or

(2) a person to sponsor, operate, advertise, or promote, pursuant to the law or compact of a governmental entity,

a lottery, sweepstakes, or other betting, gambling, or wagering scheme based, directly or indirectly (through the use of geographical references or otherwise), on one or more competitive games in which amateur or professional athletes participate, or are intended to participate, or on one or more performances of such athletes in such games.

§ 3703. Injunctions

A civil action to enjoin a violation of section 3702 may be commenced in an appropriate district court of the United States by the Attorney General of the United States, or by a professional sports organization or amateur sports organization whose competitive game is alleged to be the basis of such violation.

§ 3704. Applicability

(a) Section 3702 shall not apply to--

(1) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity, to the extent that the scheme was conducted by that State or other governmental entity at any time during the period beginning January 1, 1976, and ending August 31, 1990;

(2) a lottery, sweepstakes, or other betting, gambling, or wagering scheme in operation in a State or other governmental entity where both--

(A) such scheme was authorized by a statute as in effect on October 2, 1991; and

(B) a scheme described in section 3702 (other than one based on parimutuel animal racing or jai-alai games) actually was conducted in that State or other governmental entity at any time during the period beginning September 1, 1989, and ending October 2, 1991, pursuant to the law of that State or other governmental entity;

(3) a betting, gambling, or wagering scheme, other than a lottery described in paragraph (1), conducted exclusively in casinos located in a municipality, but only to the extent that--

(A) such scheme or a similar scheme was authorized, not later than one year after the effective date of this chapter, to be operated in that municipality; and

(B) any commercial casino gaming scheme was in operation in such municipality throughout the 10-year period ending on such effective date pursuant to a comprehensive system of State regulation authorized by that State's constitution and applicable solely to such municipality; or

(4) parimutuel animal racing or jai-alai games.

(b) Except as provided in subsection (a), section 3702 shall apply on lands described in section 4(4) of the Indian Gaming Regulatory Act (25 U.S.C. 2703(4)).

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